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SENATE BILL 7

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Cisco McSorley

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO JUVENILES; PROVIDING COURTS THE DISCRETION TO DETERMINE WHETHER AN ADULT SENTENCE OR JUVENILE SANCTIONS ARE APPROPRIATE FOR A SERIOUS YOUTHFUL OFFENDER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-18-15.3 NMSA 1978 (being Laws 1993, Chapter 77, Section 3) is amended to read:

"31-18-15.3. SERIOUS YOUTHFUL OFFENDER--DISPOSITION.--

A. An alleged serious youthful offender may be detained in any of the following places, prior to arraignment in metropolitan, magistrate or district court:

(1) a detention facility for delinquent children, licensed by the children, youth and families department;

(2) any other suitable place, other than a

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1 facility for the care and rehabilitation of delinquent
2 children, that meets standards for detention facilities, as set
3 forth in the Children's Code and federal law; or

4 (3) a county jail, if a facility described in
5 Paragraph (1) or (2) of this subsection is not appropriate.

6 B. When an alleged serious youthful offender is
7 detained in a juvenile detention facility prior to trial, the
8 time spent in the juvenile detention facility shall count
9 [~~towards~~] toward completion of any sentence imposed.

10 C. At arraignment, when a metropolitan or district
11 court judge or a magistrate determines that an alleged serious
12 youthful offender should remain in custody, the alleged serious
13 youthful offender may be detained in an adult or juvenile
14 detention facility, subject to the facility's accreditation and
15 the provisions of applicable federal law.

16 D. When an alleged serious youthful offender is
17 found guilty of first degree murder and found not amenable to
18 treatment, the court shall sentence the offender pursuant to
19 the provisions of the Criminal Sentencing Act. The court may
20 sentence the offender to less than, but not exceeding, the
21 mandatory term for an adult. The determination of guilt
22 becomes a conviction for purposes of the Criminal Sentencing
23 Act.

24 E. Prior to the sentencing of an alleged serious
25 youthful offender who is convicted of first degree murder and

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1 found not amenable to treatment, adult probation services shall
2 prepare a presentence report and submit the report to the court
3 and the parties five days prior to the sentencing hearing.

4 F. When the alleged serious youthful offender is
5 convicted of a lesser offense than first degree murder, the
6 court shall provide for disposition of the offender pursuant to
7 the provisions of Section [~~32-2-19 or 32-2-20~~] 32A-2-19 or
8 32A-2-20 NMSA 1978. When an offender is adjudicated as a
9 delinquent child, the conviction shall not be used as a
10 conviction for purposes of the Criminal Sentencing Act."

11 Section 2. Section 32A-2-3 NMSA 1978 (being Laws 1993,
12 Chapter 77, Section 32, as amended) is amended to read:

13 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

14 A. "delinquent act" means an act committed by a
15 child that would be designated as a crime under the law if
16 committed by an adult, including the following offenses:

17 (1) an offense pursuant to municipal traffic
18 codes or the Motor Vehicle Code:

19 (a) driving while under the influence of
20 intoxicating liquor or drugs;

21 (b) failure to stop in the event of an
22 accident causing death, personal injury or damage to property;

23 (c) unlawful taking of a vehicle or
24 motor vehicle;

25 (d) receiving or transferring of a

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1 stolen vehicle or motor vehicle;

2 (e) homicide by vehicle;

3 (f) injuring or tampering with a
4 vehicle;

5 (g) altering or changing of an engine
6 number or other vehicle identification numbers;

7 (h) altering or forging of a driver's
8 license or permit or any making of a fictitious license or
9 permit;

10 (i) reckless driving;

11 (j) driving with a suspended or revoked
12 license; or

13 (k) an offense punishable as a felony;

14 (2) buying, attempting to buy, receiving,
15 possessing or being served any alcoholic liquor or being
16 present in a licensed liquor establishment, other than a
17 restaurant or a licensed retail liquor establishment, except in
18 the presence of the child's parent, guardian, custodian or
19 adult spouse. As used in this paragraph, "restaurant" means an
20 establishment where meals are prepared and served primarily for
21 on-premises consumption and that has a dining room, a kitchen
22 and the employees necessary for preparing, cooking and serving
23 meals. "Restaurant" does not include an establishment, as
24 defined in regulations promulgated by the director of the
25 special investigations division of the department of public

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1 safety, that serves only hamburgers, sandwiches, salads and
2 other fast foods;

3 (3) a violation of Section 30-29-2 NMSA 1978,
4 regarding the illegal use of a glue, aerosol spray product or
5 other chemical substance;

6 (4) a violation of the Controlled Substances
7 Act;

8 (5) escape from the custody of a law
9 enforcement officer or a juvenile probation or parole officer
10 or from any placement made by the department by a child who has
11 been adjudicated a delinquent child;

12 (6) a violation of Section 30-15-1.1 NMSA 1978
13 regarding unauthorized graffiti on personal or real property;
14 or

15 (7) a violation of an order of protection
16 issued pursuant to the provisions of the Family Violence
17 Protection Act;

18 B. "delinquent child" means a child who has
19 committed a delinquent act;

20 C. "delinquent offender" means a delinquent child
21 who is subject to juvenile sanctions only and who is not a
22 youthful offender or a serious youthful offender;

23 D. "detention facility" means a place where a child
24 may be detained under the Children's Code pending court hearing
25 and does not include a facility for the care and rehabilitation

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1 of an adjudicated delinquent child;

2 E. "felony" means an act that would be a felony if
3 committed by an adult;

4 F. "misdemeanor" means an act that would be a
5 misdemeanor or petty misdemeanor if committed by an adult;

6 G. "restitution" means financial reimbursement by
7 the child to the victim or community service imposed by the
8 court and is limited to easily ascertainable damages for injury
9 to or loss of property, actual expenses incurred for medical,
10 psychiatric and psychological treatment for injury to a person
11 and lost wages resulting from physical injury, which are a
12 direct and proximate result of a delinquent act. "Restitution"
13 does not include reimbursement for damages for mental anguish,
14 pain and suffering or other intangible losses. As used in this
15 subsection, "victim" means a person who is injured or suffers
16 damage of any kind by an act that is the subject of a complaint
17 or referral to law enforcement officers or juvenile probation
18 authorities. Nothing contained in this definition limits or
19 replaces the provisions of Subsections A and B of Section
20 32A-2-27 NMSA 1978;

21 H. "serious youthful offender" means an individual
22 fifteen to eighteen years of age who is charged with and
23 indicted or bound over for trial for first degree murder [A
24 ~~"serious youthful offender" is not a delinquent child as~~
25 ~~defined pursuant to the provisions of this section]; and~~

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1 I. "youthful offender" means a delinquent child
2 subject to adult or juvenile sanctions who is:

3 (1) fourteen to eighteen years of age at the
4 time of the offense and who is adjudicated for at least one of
5 the following offenses:

6 (a) second degree murder, as provided in
7 Section 30-2-1 NMSA 1978;

8 (b) assault with intent to commit a
9 violent felony, as provided in Section 30-3-3 NMSA 1978;

10 (c) kidnapping, as provided in
11 Section 30-4-1 NMSA 1978;

12 (d) aggravated battery, as provided in
13 Subsection C of Section 30-3-5 NMSA 1978;

14 (e) aggravated battery against a
15 household member, as provided in Subsection C of Section
16 30-3-16 NMSA 1978;

17 (f) aggravated battery upon a peace
18 officer, as provided in Subsection C of Section 30-22-25 NMSA
19 1978;

20 (g) shooting at a dwelling or occupied
21 building or shooting at or from a motor vehicle, as provided in
22 Section 30-3-8 NMSA 1978;

23 (h) dangerous use of explosives, as
24 provided in Section 30-7-5 NMSA 1978;

25 (i) criminal sexual penetration, as

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1 provided in Section 30-9-11 NMSA 1978;

2 (j) robbery, as provided in Section
3 30-16-2 NMSA 1978;

4 (k) aggravated burglary, as provided in
5 Section 30-16-4 NMSA 1978;

6 (l) aggravated arson, as provided in
7 Section 30-17-6 NMSA 1978; or

8 (m) abuse of a child that results in
9 great bodily harm or death to the child, as provided in Section
10 30-6-1 NMSA 1978;

11 (2) fourteen to eighteen years of age at the
12 time of the offense, ~~[and]~~ who is adjudicated for any felony
13 offense and who has had three prior, separate felony
14 adjudications within a three-year time period immediately
15 preceding the instant offense. The felony adjudications relied
16 upon as prior adjudications shall not have arisen out of the
17 same transaction or occurrence or series of events related in
18 time and location. Successful completion of consent decrees
19 are not considered a prior adjudication for the purposes of
20 this paragraph; or

21 (3) fourteen years of age and who is
22 adjudicated for first degree murder, as provided in Section
23 30-2-1 NMSA 1978."

24 Section 3. Section 32A-2-6 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 35) is amended to read:

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1 "32A-2-6. TRANSFER OF JURISDICTION OVER CHILD FROM OTHER
2 TRIBUNALS TO COURT.--

3 A. If it appears to a tribunal in a criminal matter
4 that the defendant was under the age of eighteen years at the
5 time the offense charged was alleged to have been committed and
6 the offense charged is a delinquent act pursuant to the
7 provisions of the Delinquency Act, the tribunal shall promptly
8 transfer jurisdiction of the matter and the defendant to the
9 court, together with a copy of the accusatory pleading and
10 other papers, documents and transcripts of testimony relating
11 to the case. [~~The tribunal shall not transfer a serious~~
12 ~~youthful offender.~~]

13 B. Upon transfer, the court shall have exclusive
14 jurisdiction over the proceedings and the defendant. The
15 transferring tribunal shall order that the defendant promptly
16 be taken to the court or taken to a place of detention
17 designated by the court or released to the custody of a parent,
18 guardian, custodian or other person legally responsible for the
19 defendant to be brought before the court at a time designated
20 by the court. Upon transfer to the court, a petition shall be
21 prepared and filed in the court in accordance with the
22 provisions of the Delinquency Act. If the defendant is not a
23 child at the time of transfer, the court retains jurisdiction
24 over the matter only until disposition is made by the court."

25 Section 4. Section 32A-2-17 NMSA 1978 (being Laws 1993,
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1 Chapter 77, Section 46, as amended) is amended to read:

2 "32A-2-17. PREDISPOSITION STUDIES--REPORTS AND
3 EXAMINATIONS.--

4 A. After a petition has been filed and either a
5 finding with respect to the allegations of the petition has
6 been made or a notice of intent to admit the allegations of the
7 petition has been filed, the court may direct that a
8 predisposition study and report to the court be made in writing
9 by the department or an appropriate agency designated by the
10 court concerning the child, the family of the child, the
11 environment of the child and any other matters relevant to the
12 need for treatment or to appropriate disposition of the case.
13 The following predisposition reports shall be provided to the
14 parties and the court five days before actual disposition or
15 sentencing:

16 [~~(1) the adult probation and parole division~~
17 ~~of the corrections department shall prepare a predisposition~~
18 ~~report for a serious youthful offender;~~

19 ~~(2) the department shall prepare a~~
20 ~~predisposition report for a serious youthful offender who is~~
21 ~~convicted of an offense other than first degree murder;~~

22 ~~(3)]~~ (1) the department shall prepare a
23 predisposition report for a youthful offender or a serious
24 youthful offender concerning the [~~youthful~~] offender's
25 amenability to treatment and if:

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1 (a) the court determines that a juvenile
2 disposition is appropriate, the department shall prepare a
3 subsequent predisposition report; or

4 (b) the court makes the findings
5 necessary to impose an adult sentence pursuant to Section
6 32A-2-20 NMSA 1978, the adult probation and parole division of
7 the corrections department shall prepare a subsequent
8 predisposition report; and

9 [~~(4)~~] (2) the department shall prepare a
10 predisposition report for a delinquent offender, upon the
11 court's request.

12 B. Where there are indications that the child may
13 have a mental disorder or developmental disability, the court,
14 on motion by the children's court attorney or that of counsel
15 for the child, may order the child to be examined at a suitable
16 place by a physician, a licensed psychologist or a licensed
17 independent social worker prior to a hearing on the merits of
18 the petition. An examination made prior to the hearing or as a
19 part of the predisposition study and report shall be conducted
20 on an outpatient basis, unless the court finds that placement
21 in a hospital or other appropriate facility is necessary.

22 C. The court, after a hearing, may order
23 examination by a physician, a licensed psychologist or a
24 licensed independent social worker of a parent or custodian
25 whose ability to care for or supervise a child is an issue

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1 before the court.

2 D. The court may order that a child adjudicated as
3 a delinquent child be transferred to the facility designated by
4 the secretary of the department for a period of not more than
5 fifteen days within a three-hundred-sixty-five-day time period
6 for purposes of diagnosis, with direction that the court be
7 given a report indicating what disposition appears most
8 suitable when the interests of the child and the public are
9 considered.

10 E. Once the child is committed, the department
11 shall determine when the child is released. The release shall
12 be any time after commitment, but not more than fifteen days
13 after commitment. Upon petition by the department to the
14 court, the judge may extend the commitment for an additional
15 fifteen days upon good cause shown."

16 Section 5. Section 32A-2-20 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 49, as amended) is amended to read:

18 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER AND SERIOUS
19 YOUTHFUL OFFENDER.--

20 A. The court has the discretion to invoke either an
21 adult sentence or juvenile sanctions on a youthful offender or
22 a serious youthful offender. The children's court attorney
23 shall file a notice of intent to invoke an adult sentence
24 within ten working days of the filing of the petition, provided
25 that the court may extend the time for filing of the notice of

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1 intent to invoke an adult sentence, for good cause shown, prior
2 to the adjudicatory hearing. A preliminary hearing by the
3 court or a hearing before a grand jury shall be held, within
4 ten days after the filing of the intent to invoke an adult
5 sentence, to determine whether probable cause exists to support
6 the allegations contained in the petition.

7 B. If the children's court attorney has filed a
8 notice of intent to invoke an adult sentence and the child is
9 adjudicated as a youthful offender or a serious youthful
10 offender, the court shall make the following findings in order
11 to invoke an adult sentence:

12 (1) the child is not amenable to treatment or
13 rehabilitation as a child in available facilities; and

14 (2) the child is not eligible for commitment
15 to an institution for children with developmental disabilities
16 or mental disorders.

17 C. In making the findings set forth in Subsection B
18 of this section, the judge shall consider the following
19 factors:

20 (1) the seriousness of the alleged offense;

21 (2) whether the alleged offense was committed
22 in an aggressive, violent, premeditated or willful manner;

23 (3) whether a firearm was used to commit the
24 alleged offense;

25 (4) whether the alleged offense was against

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1 persons or against property, greater weight being given to
2 offenses against persons, especially if personal injury
3 resulted;

4 (5) the sophistication and maturity of the
5 child as determined by consideration of the child's home,
6 environmental situation, emotional attitude and pattern of
7 living;

8 (6) the record and previous history of the
9 child;

10 (7) the prospects for adequate protection of
11 the public and the likelihood of reasonable rehabilitation of
12 the child by the use of procedures, services and facilities
13 currently available; and

14 (8) any other relevant factor, provided that
15 factor is stated on the record.

16 D. If a child has previously been sentenced as an
17 adult pursuant to the provisions of this section, there shall
18 be a rebuttable presumption that the child is not amenable to
19 treatment or rehabilitation as a child in available facilities.

20 E. If the court invokes an adult sentence, the
21 court may sentence the child to less than, but shall not
22 exceed, the mandatory adult sentence. A youthful offender or a
23 serious youthful offender given an adult sentence shall be
24 treated as an adult offender and, once the child attains the
25 age of eighteen, shall be transferred to the legal custody of

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1 an agency responsible for incarceration of persons sentenced to
2 adult sentences. This transfer terminates the jurisdiction of
3 the court over the child with respect to the delinquent acts
4 alleged in the petition.

5 F. If a juvenile disposition is appropriate, the
6 court shall follow the provisions set forth in Section
7 32A-2-19 NMSA 1978. A youthful offender or a serious youthful
8 offender may be subject to extended commitment in the care of
9 the department until the age of twenty-one, pursuant to the
10 provisions of Section 32A-2-23 NMSA 1978.

11 ~~[G. A child fourteen years of age or older, charged~~
12 ~~with first degree murder, but not convicted of first degree~~
13 ~~murder and found to have committed a youthful offender offense~~
14 ~~as set forth in Subsection I of Section 32A-2-3 NMSA 1978, is~~
15 ~~subject to the dispositions set forth in this section.~~

16 H.] G. A child fourteen years of age or older
17 [~~charged with first degree murder, but~~] found to have committed
18 a delinquent act that is neither first degree murder nor a
19 youthful offender offense as set forth in Subsection I of
20 Section 32A-2-3 NMSA 1978, shall be adjudicated as a delinquent
21 offender subject to the dispositions set forth in Section
22 32A-2-19 NMSA 1978."

23 Section 6. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2009.